

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.298 OF 1996

Mrs.Poonam V. Matta
adult of Bombay, Indian Inhabitant
residing at Flat No.601/B,
6th floor, Mota Mansion C.H.S.
Ltd. Plot No.61, Lokhandwala
Complex, Andheri (West),
Bombay-400 058.

Petitioner
(orig.Respondent)

vs.

1. Ramesh Daulatram Harjani
2. Madan Daulatram Harjani
both residing at 16/2,
Anand Niwas, "A" Road,
Churchgate,
Bombay-400 020.

Respondents
(orig.Disputants)

Mr.R.S.Apte with Mr.Mandar Limaye i/b.M/s.Chitnis
Vaithy & Co. for the petitioner.

Mr.Sudarshan S. Shinghrani with Mr.Saraji for the
respondents.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th August 2005

ORAL JUDGMENT.

This Civil Revision Application arises from the
order of Eviction passed by the Competent Authority,
Konkan Division, Mumbai in Case No.9/1995 which was an
application filed under Section 13-A(2) of the Bombay
Rents, Hotel and Lodging House Rates (Control) Act, 1947
(For short, "the Bombay Rent Act").

2. In the said application it was contended by the landlord that flat no.601/B, located on the 6th floor in Mota Mansion C.H.S. Ltd. Plot No.61, Lokhandwala Complex, Andheri was given on leave and licence to the respondent-present petitioner pursuant to an agreement dated 1.8.1992. The respondent was, along his family members, allowed to use and occupy the suit premises for a period of 11 months and on a monthly consideration of Rs.3000/-. The said agreement was renewed vide letter dated 26th May 1993 on the same terms and conditions and the extended period of 11 months also expired on 31st May 1994. The landlord had issued advocate's notice dated 5th March 1994 calling upon the occupant to vacate the premises and hand over the possession of the suit premises by 1st June 1994. As there was no response, second notice dated 23rd January 1994 was issued and when the occupant did not vacate the premises, the landlord approached the Competent Authority.

3. Written statement was filed by the occupant mainly denying the relationship of licensor and licensee. She had contended that she was a tenant and the applicant himself was not a landlord. She, therefore, challenged the maintainability of the application; before the Competent Authority under Section 13-A(2) of the Bombay Rent Act. It was claimed that the occupant had deposited an amount of Rs.2 lacs with the applicant for

a consideration to transfer the suit flat to her ownership on completion of all the formalities and this amount of deposit was adjustable against the monthly consideration. She claimed that the agreement at Exhibit A and purportedly signed on 1st August 1992 was obtained by misrepresentation namely; an understanding that unless the flat is transferred to her, it shall not be allotted to anyone else and in the absence of such an agreement the society would not transfer the shares in her name. She also pointed out that the applicant had several flats in Mumbai which were let out to various persons by executing similar agreements of leave and licence. It was further alleged that the applicant had induced the occupant to get her admitted as member and the shareholder in his place and thereby obtaining ownership of the suit premises on transfer of shares of applicant in the name of the respondent. After filing this written statement the occupant applied for leave to defend under sub-section (4) of Section 31-E of the Bombay Rent Act. This application came to be rejected by the Competent Authority on 26th March 1996 and on the same day the impugned order for eviction came to be passed. It is pertinent to note that the Competent Authority did not record any evidence of the applicant so as to prove the agreement at Exhibit A.

4. Section 31-E has been introduced in the Bombay Rent

Act by Maharashtra Act No.18 of 1987 which is included in Part II-A of the Bombay Rent Act incorporated by the said amendment in 1987 and it prescribes a special procedure for disposal of applications. Sub-section (4)(b) of Section 32-E states that the Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 13A(2). The reasoning given by the Competent Authority in rejecting this application for leave to defend is far from being satisfactory. The Competent Authority claimed that the occupant had in her reply to the rejoinder taken different and new plea stating that the applicant was only an allottee of the premises and not the owner. To say the least, this was not a new plea and it was very much incorporated in the written statement itself. For deciding the application filed under Section 13A(2) of the Bombay Rent Act, the main issue was whether the agreement dated 1st August 1992 was an agreement of tenancy or the licence and this could have been more efficaciously done, had both the parties been called upon to lead the evidence. It is evident that the Competent Authority has hastily rejected the application moved by the applicant seeking leave to defend and, consequently, the reasoning given

in support of the order of eviction is indefensible. The terms of the agreement dated 1st August 1992 could not have been relied upon unless the agreement was proved at least by the applicant through his oral deposition. The occupant in her written statement had stated that the agreement was a sham and a bogus document and it was obtained only by way of a cover up. She alleged that the real intention behind executing the said agreement was different.

5. In the premises, this revision application succeeds and the order dated 26th March 1996 rejecting the application seeking leave to defend is hereby quashed and set aside. The order of eviction allowing Application no.9/1995 is also quashed and set aside. The occupant is hereby granted leave to defend under Section 31-E(4)(b) of the Bombay Rent Act and application no.9/1995 is hereby restored to the file of the Competent Authority. Based on the pleadings already available on record, the Competent Authority shall frame the issues within two weeks from the receipt of writ from this Court and hear and decide the application on its own merits as expeditiously as possible and in any case by 31st December 2005 after affording the parties to adduce evidence.

6. Rule is made absolute accordingly with no order as

to costs.

7. Writ to go forthwith to the Competent Authority.

8. It is made clear that as directed by this Court, the occupant shall continue to deposit the monthly amount before the Competent Authority.

(B.H. MARLAPALLE,J.)